

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 860 of 1985

For Approval and Signature:

Hon'ble MR.JUSTICE N.J.PANDYA

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1. Whether Reporters of Local Papers may be allowed to see the judgment ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of judgment?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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S K DESAI

Versus

STATE OF GUJARAT

Appearance:

Mr PC Master for M/s NJ MEHTA ASSO. for Petitioner
Mr AJ Desai, AGP, for M/s MG Doshit & Co.

CORAM : MR.JUSTICE N.J.PANDYA

Date of decision: 09/10/96

ORAL JUDGEMENT

The petitioner has a grievance that he should have been promoted to the post of Assistant Geologist with effect from 1st April 1971 instead of 18th October

1973. His grievance is centering around adverse remarks that were found in the confidential reports for which his representation before the concerned authorities at the relevant time was pending. The adverse remarks pertain to the service period from 7.11.1967 to 31.5.1968, 1968 and 2.9.1969 to 31.12.1969.

2 The petitioner has tried to build up a case on the basis that his representations against the said adverse entries was pending and yet he came to be promoted on 18th October 1973 and therefore the petitioner has inferred that the remarks in the confidential reports are impliedly ignored as of no consequence at all.

3 However, the affidavit-in-reply is very clear. To the post in question the criteria for promotion is of proved merit and efficiency. Looking to the said adverse entries if he could not be promoted between 1.4.1971 to 18.10.1973, there was justification. Merely because a representation was pending undecided and if the petitioner is promoted, it would not wipe out the adverse entries. However, in any event it would mean that the case of the petitioner has been considered dispassionately and objectively by the concerned authorities. He having reached the required standard of merit and efficiency, his case was again considered and promotion came to be given with effect from 18.10.1973.

4 The learned advocate Shri P.C. Master appearing for the petitioner relied upon a decision reported in 19 GLR 1021. In the petition also this decision has been relied upon and specific ground in the petition has been raised as 4(c). The affidavit-in-reply at page 22 in paragraph no.4.2 however take care of the same. The guidelines as to maintenance of ephemeral rolls came to be issued by the Government in the year 1969. The period for which the adverse remarks came to be given to the petitioner being prior to it, obviously, these guidelines would not apply. The aforesaid judgment of the Gujarat High Court also therefore will not apply and will be of no assistance to the petitioner.

5 One more decision relied on by the petitioner is the one reported in AIR 1967 SC 1622 wherein in para 17 the learned Judges have lamented that for one reason or the other not arising out of any fault on the part of the appellant, though the adverse report was communicated to him, the Government had not considered his explanation and decided whether the report was justified. In the instant case in the affidavit-in-reply in para 4.2 reads otherwise and it is stated that prompt action has been

taken by the authority for verification. Moreover, as noted above, when next opportunity arose, objectively assessing the purpose and eligibility of the petitioner when found suitable, he has been promoted.

In view of what is stated above, there is no substance in the matter. The petition is rejected. Rule is discharged. Interim relief, if any, is vacated.

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